



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

TIDEWATER REGIONAL OFFICE

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VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO

**DEPARTMENT OF THE NAVY, COMMANDING OFFICER, NAVAL AIR
STATION OCEANA
FOR
NAVAL AIR STATION OCEANA
EPA ID No. VA2170024606**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 10.1-1455, between the Virginia Waste Management Board, and the Department of the Navy, Commanding Officer, Naval Air Station Oceana, regarding the Naval Air Station Oceana, for the purpose of resolving certain violations of the Virginia Waste Management Act and the applicable regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the Virginia Waste Management Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1401.
2. "CFR" means the Code of Federal Regulations, as incorporated into the Regulations.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
5. "Facility" or "Site" means Naval Air Station Oceana located at 1750 Tomcat Boulevard in Virginia Beach, Virginia.

6. "Generator" means person who is a hazardous waste generator, as defined by 40 CFR § 260.10.
7. "Hazardous Waste" means any solid waste meeting the definition and criteria provided in 40 CFR § 261.3.
8. "LQG" means large quantity generator, a hazardous waste generator that generates 1000 kilograms (2200 pounds) or greater of hazardous waste in a calendar month and meets other restrictions. *See* 40 CFR § 262.34(a)-(b) and (g)-(l).
9. "Navy" means Department of the Navy, Commanding Officer, Naval Air Station Oceana, the officer in command of Naval Air Station Oceana, a master jet base owned and operated by the Department of the Navy. The Navy is a "person" within the meaning of Va. Code § 10.1-1400.
10. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1455.
11. "Order" means this document, also known as a "Consent Order" or "Order by Consent."
12. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
13. "Regulations" or "VHWMR" means the Virginia Hazardous Waste Management Regulations, 9 VAC 20-60-12 *et seq.* Sections 20-60-14, -124, -260 through -266, -268, -270, -273, and -279 of the VHWMR incorporate by reference corresponding parts and sections of the federal Code of Federal Regulations (CFR), with the effective date as stated in 9 VAC 20-60-18, and with independent requirements, changes, and exceptions as noted. In this Order, when reference is made to a part or section of the CFR, unless otherwise specified, it means that part or section of the CFR as incorporated by the corresponding section of the VHWMR. Citations to independent Virginia requirements are made directly to the VHWMR.
14. "Solid Waste" means any discarded material meeting the definition provided in 40 CFR § 261.2.
15. "Va. Code" means the Code of Virginia (1950), as amended.
16. "VAC" means the Virginia Administrative Code.
17. "Virginia Waste Management Act" means Chapter 14 (§ 10.1-1400 *et seq.*) of Title 10.1 of the Va. Code. Article 4 (Va. Code §§ 10.1-1426 through 10.1-1429) of the Virginia Waste Management Act addresses Hazardous Waste Management.

SECTION C: Findings of Fact and Conclusions of Law

1. The Navy owns and operates the Facility in Virginia Beach, Virginia. The Facility is a master jet base for the United States Navy. Operations at the Facility are subject to the Virginia Waste Management Act and the Regulations.
2. Navy submitted an updated RCRA Subtitle C Site Identification Form (submitted February 28, 2018) that gave notice of continuation of regulated waste activity at the Facility as an LQG of hazardous waste. The Navy was issued EPA ID No. VA2170024606 for the Facility.

3. At the Facility, with respect to the waste contemplated in this Order, a Navy contractor generated waste “Dura” blocks, rubber side wall panels, and comingled paper, rubber, grit, and dust which is a solid waste (“Waste”). According to the Navy, the Navy identified the Waste as being potentially hazardous waste in the contract, instructed the contractor to accumulate the waste in hazardous waste Gaylord boxes and to properly dispose of the material.
4. On July 21, 2017, Naval Facilities Mid-Atlantic Regional Environmental staff, who provides environmental regulatory compliance on the Facility’s behalf for hazardous waste, contacted DEQ to provide initial notice of a developing investigation involving the possible improper management of solid waste with the potential of being hazardous waste, at and from the Facility.
5. On September 6, 2017, DEQ staff sent Navy a Request for Information (“RFI”), requesting additional information regarding the possible improper management of the waste. On September 26, 2017, and November 9, 2017, Navy responded to the RFI.
6. In November 2017, Department staff conducted a file review of the Navy’s response to the RFI to evaluate compliance with the requirements of the Virginia Waste Management Act and the Regulations. Based on the file review, Department staff made the following observations:
 - a. On or about July 11, 2017, a contractor completed cleaning and maintenance work at the Mobile Firearm Range (“MFR”) located at the Facility. This work generated the Waste (“Dura” blocks and rubber side wall panels, as well as a five gallon container of debris including paper, rubber, grit, and dust, gray to black in color from the MFR floor). The Waste was disposed at a permitted solid waste landfill.
 - b. A hazardous waste determination utilizing either testing or supportable generator knowledge of the hazardous characteristics of the Waste or process was not made prior to disposal.
7. 40 CFR § 262.11, incorporated by reference in 9 VAC 20-60-262, states that, “a person who generates a solid waste, as identified in 40 CFR 261.2, must make an accurate determination as to whether that waste is a hazardous waste in order to ensure wastes are properly managed... using the following method: (a) He should first determine if the waste is excluded from regulation under 40 CFR 261.4; (b) He must then determine if the waste is listed as a hazardous waste in subpart D of 40 CFR part 261; (c) For purposes of compliance with 40 CFR part 268, or if the waste is not listed in subpart D of 40 CFR part 261 by either: (1) testing the waste according to the methods set forth in subpart C of 40 CFR part 261, or according to an equivalent method approved by the Administrator under 40 CFR 260.21; or (2) Applying knowledge of the hazardous characteristics of the waste in light of the materials or the processes used.
8. Va. Code § 10.1-1402(11) states, “The Board shall carry out the purposes and provisions of this chapter and compatible provisions of federal acts and is authorized to... promulgate and enforce regulations, and provide for reasonable variances and exemptions necessary to carry out its powers and duties and the intent of this chapter and the federal acts...”
9. On December 6, 2017, based on the inspection and follow-up information, the Department issued a Notice of Violation to the Navy for the violations described in paragraphs C(6) through C(7), above.
10. On December 7, 2017, the Navy responded to the NOV. On January 24, 2018, Department staff met with representatives of the Navy to discuss the violations.

11. Based on the results of the November 2017, file review, and the January 24, 2018, meeting, the Board concludes that the Navy has violated 40 CFR § 262.11, and 9 VAC 20-61-262, as described in paragraphs C(6) through C(7), above.
12. At the January 24, 2018, meeting and in follow up correspondence, the Navy stated that they have implemented new hazardous waste management measures and training at the Facility to decrease the likelihood of this improper management in the future. Based on the implementation of the new hazardous waste management measures at the Facility, the conditions that led to the violations described in paragraphs C(6) through C(7), above, have been corrected.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code § 10.1-1455, the Board orders the Navy, and the Navy agrees to:

Pay a civil charge of \$9,000 within 60 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Department of the Navy, Commanding Officer, Naval Air Station Oceana shall include its Federal Employer Identification Number (FEIN) (34-0727612) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF).

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of the Navy for good cause shown by the Navy, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in the NOV dated December 6, 2017. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, the Navy admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. The Navy acknowledges that any civil action taken by the Board to enforce the terms of this Order will be in the Circuit Court of the City of Richmond. Department of the Navy does not waive any rights it may have to seek removal of such action to federal district court pursuant to 28 U.S.C. § 1441 *et seq.*
5. The Navy declares it has received fair and due process under the Administrative Process Act and the Virginia Waste Management Act and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by the Navy to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. The Navy shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. The Navy shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. The Navy shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and the Navy. Nevertheless, the Navy agrees to be bound by any compliance date which precedes the effective date of this Order.

11. This Order shall continue in effect until:

- a. The Director or his designee terminates the Order after the Navy has completed all of the requirements of the Order;
- b. The Navy petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
- c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to the Navy.


Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the Navy from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. In accordance with the Federal Anti-Deficiency Act, Title 31 United States Code § 1341, the obligations of the Navy, under this section are expressly conditioned on the availability of Congressional appropriations, which the Navy agrees to seek in amounts sufficient to timely accomplish these undertakings. If sufficient appropriations are not available and cannot be obtained, the Navy will promptly inform the DEQ Regional Director. In such case, the Director may terminate the Order and take other action, if so desired, or amend the Order with the Navy consent or in accordance with the Administrative Process Act.
13. Any plans, reports, schedules or specifications attached hereto or submitted by the Navy and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
14. The undersigned representative of the Navy certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind the Navy to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of the Navy.
15. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
16. By its signature below, the Navy voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 20__.

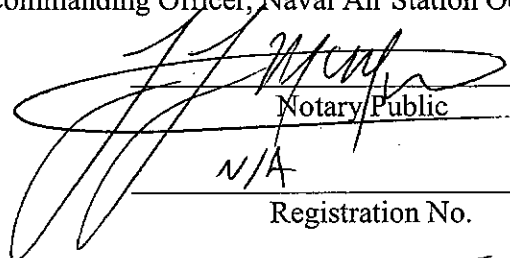
Craig R. Nicol, Regional Director
Department of Environmental Quality

Department of the Navy, Commanding Officer, Naval Air Station Oceana voluntarily agrees to the issuance of this Order.

Date: 16 JUL 18 By: , CO NAS OCEANA
(Person) (Title)
Chad Vincelette, Department of the Navy, Commanding Officer, Naval Air Station Oceana

Commonwealth of Virginia
City/County of Virginia Beach

The foregoing document was signed and acknowledged before me this 16 day of July,
2018, by CAPT Chad P. Vincelette who is CO, NAS Oceana of
Department of the Navy, Commanding Officer, Naval Air Station Oceana, on behalf of the Navy.


Notary Public
N/A
Registration No.

My commission expires: Indefinite

Notary seal:

LTJG Jesse McMurdo, U.S. Navy
Legal Assistance Attorney
Notary Public
Under the authority of 10 U.S.C. 1044a
Commission Expires: Indefinite